United States Department of the Interior

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In Reply Refer To:
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EMS TRANSMISSION August 2, 2006
Information Bulletin No. NV-2006-035

To: Field Managers, Nevada
Deputy State Directors and Staff Chiefs, NSO

From: Margaret L. Jensen
Deputy State Director, Natural Resources, Lands and Planning

Subject: Processing Applications for Temporary Nonrenewable Use Permits and Temporary Changes in Grazing Use Deemed Outside of the Intent of Grazing Permits.

With above average precipitation levels often comes above average expectations of how much forage will be available for livestock grazing. These heightened expectations will likely translate into an increase in the number of applications for Temporary Nonrenewable grazing use (TNR). The purpose of this Information Bulletin is to identify the procedures and timelines which, if followed, will result in sound decisions regarding TNR applications.

Nonrenewable grazing permits are considered only where either: 1) the applicant has used all of the permitted active use in the allotment being applied for, or 2) has no grazing permit in the allotment. In other words, nonrenewable permits are not issued until all permitted active use has been authorized in a given grazing year. These nonrenewable permits are not, and should not be, considered as part of a regular grazing permit. They are a stand alone, one time permit.

In the absence of adequate flexibility provisions either specified or referenced as a term and condition of a grazing permit, applications to temporarily modify permitted grazing use, such as period of use or kind of use, that are determined to be outside of the intent of the permit, are subject to the same process outlined herein.[1]

Steps

The following are the steps one should generally follow when dealing with these applications:

1. Application for TNR is filed;

[1] The proposed regulations changes define "within the intent" as 14 days on either end of the permitted use period, without an increase above permitted AUMs.

2. Field examination is made to collect information related to forage availability and resource conditions;
3. Consultation, cooperation and coordination(CCC) with permittees, State agencies, and interested publics is carried out;
4. Appropriate NEPA analysis is carried out based on #2 & 3;
5. Decision issued under 4160 to approve, partially approve or deny request for TNR;
6. Implement decision after appeal period ends.

Step #1: Application for TNR is filed – Applications for temporary nonrenewable permits should be made on the Grazing Application form 4130-1. Filing this application triggers the process.

Step #2: Field examination is made to collect information related to resource conditions – Resource specialists from the Field Office need to make an on-the-ground examination of the allotment. This examination should be to collect data (utilization, production, trend, etc.) and document field observations which will form the basis of the decision whether or not to grant the request. Prior to going to the field, the observer should review the allotment specific resource objectives. He/she should also know which Standards for Rangeland Health and Guidelines for Livestock Grazing apply to the specific allotment. Coordination with other resource specialists is especially important so that their specific resource issues and/or concerns can be reviewed during the field visit.

Sensitive areas such as riparian should be observed. It may be the case that sufficient forage is present in the uplands to allow for additional use, but the detrimental effects of that use on sensitive areas results in denial of the request. It is also useful in multi-pasture allotments to look at previously used pastures. One reason that extra forage is available in a pasture or use area within an allotment may be the result of overuse of other previously used areas. This can be the basis for rejecting a request for TNR.

Following completion of the field examination, a report should be prepared which details the findings of the site visit and makes recommendations, with interdisciplinary concurrence, as to whether or not it is appropriate to authorize the requested use (See attached example). The information contained in this report will serve as the rationale in the forthcoming decision for approving, modifying or denying the application.

These field examinations take time away from priority work and should be scheduled so as to provide as little disruption as possible. The use of an interdisciplinary team is preferable but will in actuality not be possible in many cases. At a minimum, the observer should review his/her findings with other resource specialist as soon as possible after returning from the field.

Step #3: CCC with permittees, State agencies, and interested publics is carried out - The CCC/scoping process can begin as early as the day that the application is received. Contacts can be made in writing, through e-mail or by telephone with follow up written documentation.

Affected State agencies and interested publics[2] should be given a minimum of 15 days to provide comments on the applied for use. Any comments should be carefully considered during the preparation of the NEPA analysis. These parties should also be provided an opportunity to comment on any NEPA documents prepared during this process. The CCC letter will also serve as a notification of when and how the NEPA document (EA) will be available for public review as well as specify the comment period.

Step #4: Appropriate NEPA analysis is carried out based on #2 & 3 – The level of NEPA analysis will vary depending upon complexity, level of resource issues, etc. As always, tiering to previously prepared NEPA documents should be explored as well as the use of the Documentation of NEPA Adequacy (DNA) where sufficient NEPA analysis already exists. Public involvement in the NEPA process is imperative as has been shown in a number of recent OHA and Federal Court rulings.

Step #5: Decision issued under 4160 to approve, partially approve or deny request for TNR – The end result of the field visits, CCC, and NEPA analysis is in all cases going to be a proposed decision issued under 43 CFR 4160.1. Based on recent discussions with the Solicitor's Office it has been determined that there is no need to include the "Stay" portion of the Final Decision language. The reason for this deviation from the standard language is found at §4160.3(d) second sentence related to the effect of a stay on implementation of a decision, "*Where …the application is for designated ephemeral or annual rangeland grazing use, the authorized grazing use shall be consistent with the final decision pending the Office of Hearings and Appeals final determination on the appeal*." The practical effect of this rule is that there is no stay of a TNR decision. This provision does not remove the requirement under §4160.3(c) to wait until the end of the 30 day appeal period before implementing the decision.[3]

Step #6: Implement decision after appeal period ends – In the case where the final decision is to authorize all or part of the requested use, issue the appropriate authorization at the end of the 30 day appeal period. This authorization must be consistent with the terms and conditions of the final decision. If an appeal has been filed, the applicant should be notified in writing that the authorization is subject to change or revocation when OHA rules on the appeal.

Timeline

The required timeline for processing applications is as follows:

Step #1 - Begins process – 0 days
Step #2 - 3 days to 30 days - 15 day average
Step #3 - 15 days to 30 days – 30 days generally

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[2] The proposed changes to the grazing regulations includes removing "interested publics" from the specific CCC requirement under §4130.6-2. This would not preclude CCC with interested publics and does not relieve BLM of requirements under NEPA to involve the public in the NEPA process.

[3] The proposed changes to the grazing regulations includes adding, "…when BLM determines that it is necessary for orderly administration of the public lands, the authorized officer may make a decision that issues a nonrenewable permit or lease, or that affects an application for grazing use on annual or designated ephemeral rangelands, effective immediately or on a date established in the decision." Should this change to the regulations be finally approved, a final decision effective immediately could be issued for nonrenewable permits where appropriate.

Step #4- 10 days to 60 days – 30 day average
Step #5- 45 days to 60 days - 45 day average
Step #6- Ends process – 0 days

Total Time Scenarios

Best Case - 75 days (2.5 months)
Average - 120 days (4 months)
Worst Case - 180 days (6+ months)

Conclusions

Given the timing scenarios above, it is clear that the 30 day minimum advance application filing required by IM-NV-2002-040 does not provide adequate lead time to ensure completion of the process even under the best case scenario. In order to a have a reasonable likelihood of completing the process, applications for nonrenewable permits must be filed at least 120 days in advance of the requested start date. It would be a good idea to notify permittees of these realities.

Attempting to process applications 4 months in advance of the use period presents a number of challenges, especially where the growing season has not started or is in progress (generally March thru June). Applications must be reviewed and analyzed on a case by case basis. It may be necessary to complete the analysis on an "assuming specific criteria basis". The protection of the resources come first and nonrenewable use is a discretionary action. Where an application is denied, it is incumbent upon the authorized officer to clearly explain the rationale underlying the decision.

Remember that regardless of how long it takes to complete the process, no decision will be made and no authorizations issued until we are confident that our analysis is sound and defensible. **The filing of an application does not guarantee the requested outcome**. We will continue to focus on the priority work and cannot allow TNR or other discretionary actions to keep us from meeting our commitments to complete S&G assessments, conduct scheduled monitoring and, complete fully processing grazing permits by the end of FY09. If the applied for dates pass without a decision having been issued, so be it. At the same time, we have a responsibility to make a reasonable effort to act on applications. Any grazing use made without an authorization is trespass use regardless of whether or not an application has been filed.

Signed By:
Margaret L. Jensen
DSD, Resources, Lands & Planning

Authenticated By:
Ellyn Darrah
Staff Assistant

EXAMPLE

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
(APPROPRIATE FIELD OFFICE)

IN REPLY REFER TO:

Memorandum

To: Associate Field Manager, Renewable Resources

From: Rangeland Management Specialist, Renewable Resources

Subject: Temporary Nonrenewable Use Request by XYZ Company of Nevada within the ABC Mountain Allotment.

On September 25, 2001, Clark Griswould (authorized representative for XYZ Company of Nevada) applied for temporary nonrenewable (TNR) use in the North Pasture of the ABC Allotment. He applied to run 150 head of yearlings from 11/01/01 through 11/30/01, totaling 150 AUMs.

Permitted use in the North Pasture is 300 C from 9/1 to 10/31.

The North Pasture of the ABC allotment consists 3000 acres, all public lands. The allotment is all native rangeland consisting of mixed mountain shrub and sagebrush grass vegetation types, two upland meadows sites, and .25 miles of Little Fish Creek and associated riparian habitat. Multiple use objectives for the allotment/pasture include (a) maintain good to excellent mule deer habitat on 150 acres of PUTR stands, (b) maintain good to excellent fishery habitat on all public land portions of Little Fish Creek, (c) the allotment contains sage grouse nesting habitat which also is the breeding habitat in the spring. In suitable sage grouse habitat, grazing should not exceed use levels identified in the Western Association of Fish and Wildlife Agencies (WAFWA) guidelines identified in Table 2, attached, for suitable sage grouse nesting habitat (see attached).

This same amount of TNR use was applied for last year and authorized. Last year's use was authorized because monitoring showed that use has been below the objective utilization levels for the key species set for the North Pasture. Table 1, attached, shows a summary of the utilization results for past 2 years.

On September 30, 2001, I completed a field inspection on the North Pasture. Currently livestock have been in the North Pasture since 9/1. I read the utilization at range and wildlife key areas and not only took photos at the key areas, but also took photos at the riparian photo point. Use levels were recorded as slight at the key areas. Use at the riparian plot was also slight. Photos are attached, but will be placed in the range and wildlife monitoring files along with a copy of this memo. Most of the pasture received very little use and the use in the remainder of the allotment is below the allowable utilization levels. The meadows showed slight use. There was good water flow in the drainage along the northern fence of the allotment.

Based on the above information, I recommend that following CCC (assuming there are no comments that would indicate otherwise) and the completion of NEPA analysis for this year's action, that this action be approved with the same stipulations as it was authorized last year. Field inspections indicate that forage is temporarily available and approval of this action will not

interfere with existing livestock operations on public lands and is consistent with the multiple use objectives for the North Pasture, the ABC Allotment and, in conformance with the Standards and Guidelines for the ____ RAC area, as indicated by the ID teams signatures below. The proposed terms and conditions to be included on the temporary nonrenewable permit would be as follows:

1. 150 head of Cattle in the North Pasture of the ABC Allotment from November 1, 2001 to November 30, 2001 totaling 150 AUMs.

2. Grazing use from 11/1/01 through 11/30/01 in the ABC Allotment will be confined to the North Pasture.

3. Utilization of the key forage grass species will not exceed 50 percent and utilization of bitterbrush will not exceed 25 percent. If it appears that utilization objectives are going to be achieved before 11/30, the cattle will be removed within one day following notification by BLM to ensure that utilization objectives are not exceeded.

4. Utilization levels must result in exceeding or meeting the minimum height requirements for productive sage grouse habitat in sagebrush types for grasses/forbs in breeding and winter habitats on the allotment/pasture (e.g. grasses and forbs minimum requirement of 18 cm for breeding habitat will be maintained).

5. A utilization check of the ABC Allotment will be made midway through the proposed TNR use to see if actual use is consistent with the objective utilization levels for the key species in this Pasture.

6. The temporary authorization of additional AUMs above the annual permitted use will not result in a permanent change to XYZ Company of Nevada's term grazing permit.

Recommended by:

_____

----(Name)------ , Rangeland Management Specialist Date

Concurred by:

_____

------(Name)-------, Wildlife Biologist Date

_____

-----Name-------, Fishery Biologist Date

Approved by:

_____

------Name-----, Assistant Field Manager, Renewable Resources Date

Table 1. Utilization Results on the ABC Allotment (2000-2001).

KA-01 (Range)			CDW-WM-01-91 (Wildlife)		
Year	**Before TNR**	**After TNR**	**Year**	**Before TNR**	**After TNR**
2001	AGSP 5% FEID 10%	----	2001	PUTR2 9% AMAL 0	----
2000	AGSP 3% FEID 9%	AGSP 25% FEID 30%	2000	PUTR2 7% AMAL 7%	PUTR2 15% AMAL 10%

Table 2. Characteristics of sagebrush rangeland needed for productive sage grouse habitat.

	Breeding			Brood-rearing			Winter[e]		
	Height (cm)		**Canopy (%)**	**Height (cm)**		**Canopy (%)**	**Height (cm)**		**Canopy (%)**
Mesic Sites [a]									
Sagebrush	**40-80**		**15-25**	**40-80**		**10-25**	**25-35**		**10-30**
Grass/forb	**>18[c]**		**≥25[d]**	**variable**		**>15**	**N/A**		**N/A**
Arid Sites [a]									
Sagebrush	**30-80**		**15-25**	**40-80**		**10-25**	**25-35**		**10-30**
Grass/forb	**>18**		**≥15**	**variable**		**>15**	**N/A**		**N/A**
Area [b]		**>80**			**>40**			**>80**	

[a] Mesic and arid sites should be defined on a local basis; annual precipitation, herbaceous understory, and soils should be considered (Tisdale and Hironaka 1981, Hironaka et al. 1983)

[b] Percent of seasonal habitat needed with indicated conditions.

[c] Measured as "droop height"; the highest naturally growing portion of the plant.

[d] Cover should exceed 15% for perennial grasses and 10% for forbs; values should be substantially greater if most sagebrush has a growth form that provides little lateral cover (Schroeder 1995)

[e] Values for height and canopy cover are for shrubs exposed above snow. (Connelly et al. 2000)

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